

HOUSE BILL NO. 351

INTRODUCED BY W. WARBURTON

A BILL FOR AN ACT ENTITLED: "AN ACT ALLOWING FOR FREEDOM OF CONSCIENCE IN PROVIDING HEALTH CARE SERVICES; PROVIDING DEFINITIONS; PROVIDING REMEDIES; AMENDING SECTIONS 37-1-105, 37-1-136, 37-1-303, 37-1-307, 37-1-308, 37-1-402, AND 50-5-111, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. **Section 1. Short title.** [Sections 1 through 6] may be known as the "Health Care Freedom of Conscience Act".

NEW SECTION. **Section 2. Legislative findings and purpose.** (1) It is the public policy of this state to respect and protect the fundamental right of conscience of all individuals who provide health care services and prescription drugs.

(2) Without comprehensive protection, health care rights of conscience may be violated by actions including but not limited to harassment, hiring discrimination, demotion, salary reduction, transfer, termination, loss of staffing privileges, denial of aid or benefits, and refusal to license or certify a health care provider.

(3) It is the purpose of [sections 1 through 6] to protect as a basic civil right the right of all health care providers and health care institutions to decline to counsel, advise, prescribe, provide, perform, or assist in counseling, advising, prescribing, providing, or performing a health care service that violates their consciences. These health care services may include but are not limited to abortion, abortifacients, artificial birth control, artificial insemination, assisted reproduction, human cloning, euthanasia, human embryonic stem-cell research, fetal experimentation, physician-assisted suicide, and sterilization.

(4) It is the purpose of [sections 1 through 6] to prohibit all forms of discrimination, disqualification, coercion, disability, or liability against health care providers and health care institutions that decline to perform any health care service that violates their consciences.

NEW SECTION. **Section 3. Definitions.** As used in [sections 1 through 6], the following definitions

1 apply:

2 (1) (a) "Conscience" means the religious, moral, or ethical principles held by a health care provider or
3 health care institution.

4 (b) A health care institution's conscience is determined by reference to its existing or proposed religious,
5 moral, or ethical guidelines, mission statement, constitution, bylaws, articles of incorporation, or other relevant
6 documents.

7 (2) "Device" means any instrument, apparatus, or contrivance intended:

8 (a) for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in humans;

9 (b) to affect the structure or any function of the human body.

10 (3) "Health care institution" means any public or private organization, corporation, partnership, sole
11 proprietorship, association, agency, network, joint venture, or other entity that is involved in providing health care
12 services, including but not limited to:

13 (a) a hospital, clinic, medical center, or outpatient center for surgical services as defined in 50-5-101;

14 (b) a private physician's office;

15 (c) a pharmacy;

16 (d) a long-term care facility as defined in 50-5-101;

17 (e) a university medical, pharmaceutical, or nursing school or a medical, pharmaceutical, or nursing
18 training facility; or

19 (f) any other institution or location where a health care service is provided to any person.

20 (4) "Health care provider" means an individual who may be asked to participate in any way in a health
21 care service, including but not limited to:

22 (a) a physician, physician assistant, or medical assistant licensed or regulated pursuant to Title 37,
23 chapter 3;

24 (b) a nurse or medication aide licensed or regulated pursuant to Title 37, chapter 8;

25 (c) a nurse aide certified by the department of public health and human services;

26 (d) an employee of a hospital, clinic, or long-term care facility;

27 (e) a pharmacist licensed pursuant to Title 37, chapter 7, or an employee of a pharmacy;

28 (f) a researcher;

29 (g) a faculty member, student, or employee of a medical, pharmaceutical, or nursing school;

30 (h) a counselor or social worker; or

(i) any professional, paraprofessional, or any other person who provides or assists in providing health care services.

(5) "Health care service" means any phase of patient medical or pharmaceutical care or treatment or any phase of a procedure, including but not limited to:

(a) patient referral, counseling, therapy, testing, diagnosis, or prognosis;

(b) research;

(c) instruction;

(d) prescribing, dispensing, or administering any prescription drug, device, or medication;

(e) surgery; or

(f) any other care or treatment provided by a health care provider or health care institution.

(6) "Participate in a health care service" means to:

(a) counsel, advise, provide, perform, or assist in counseling, advising, providing, or performing a health care service, including a service involving a prescription drug or a device;

(b) refer or admit for purposes of providing a health care service; or

(c) participate in providing any health care service or any form of a health care service.

(7) "Prescription drug" means any drug that is required by federal law or regulation to be dispensed only by a prescription.

NEW SECTION. Section 4. Freedom of conscience of health care providers -- immunity -- discrimination prohibited. (1) A health care provider has the right to not participate in a health care service that violates the provider's conscience. A health care provider may not be required to participate in a health care service that violates the provider's conscience.

(2) (a) A health care provider who declines to participate in a health care service that violates the provider's conscience may not be held civilly, criminally, or administratively liable for the health care provider's decision.

(b) The civil immunity provisions of this subsection (2) do not apply to a health care provider employed by the state or a political subdivision of the state.

(3) It is unlawful for a person, a health care provider, a health care institution, a public or private institution, a public official, or a board that certifies competency in medical specialties to discriminate in any manner against a health care provider based on the health care provider's decision to decline to participate in

a health care service that violates the health care provider's conscience. Discrimination includes but is not limited to:

- (a) termination;
- (b) transfer;
- (c) refusal of staff privileges;
- (d) refusal of board certification;
- (e) adverse administrative action;
- (f) demotion;
- (g) loss of career specialty;
- (h) reassignment to a different shift;
- (i) reduction of wages or benefits;
- (j) discrimination in hiring;
- (k) refusal to award any grant or contract;
- (l) refusal to provide residency or other training opportunities; or
- (m) any other penalty or disciplinary or retaliatory action.

NEW SECTION. Section 5. Freedom of conscience of health care institutions -- immunity -- discrimination prohibited. (1) A health care institution has the right to not participate in a health care service that violates the health care institution's conscience. A health care institution may not be required to participate in a health care service that violates its conscience.

(2) (a) A health care institution that declines to provide or participate in a health care service that violates its conscience may not be held civilly, criminally, or administratively liable if the health care institution:

(i) provides a consent form to be signed by a patient before admission to or treatment at the institution stating that the institution reserves the right to decline to provide or participate in a health care service that violates its conscience; or

(ii) if the health care institution dispenses prescription drugs or devices, posts information in a clearly visible location that it does not participate in health care services that violate its conscience.

(b) The civil immunity provisions of this subsection (2) do not apply to a health care institution operated by the state or a political subdivision of the state.

(3) It is unlawful for a person, public or private institution, or public official to discriminate in any manner

1 against a health care institution or a person, association, corporation, or other entity attempting to establish a new
2 health care institution or to operate an existing health care institution because the health care institution or
3 person, association, corporation, or entity declines to participate in a health care service that violates the
4 conscience of the health care institution, person, association, corporation, or entity. Discrimination includes but
5 is not limited to denial, deprivation, or disqualification with respect to:

6 (a) licensure;

7 (b) any aid, assistance, benefit, or privilege, including staffing privileges; and

8 (c) any authorization, including authorization to create, expand, improve, acquire, or affiliate or merge
9 with a health care institution.

10 (4) It is unlawful for any public official, agency, institution, or entity to deny any form of aid, assistance,
11 grants, or benefits or in any other way to coerce, disqualify, or discriminate against a person, association,
12 corporation, or other entity attempting to establish a new health care institution or operating an existing health
13 care institution because the proposed or existing health care institution declines to participate in a health care
14 service contrary to the health care institution's conscience.

15
16 **NEW SECTION. Section 6. Civil remedies -- minimum penalties.** (1) A civil action for damages,
17 injunctive relief, or both may be brought for a violation of [sections 1 through 6]. It is not a defense to any claim
18 arising out of a violation of [sections 1 through 6] that the violation was necessary to prevent additional burden
19 or expense on another health care provider or health care institution, a health care payor, an individual, or a
20 patient.

21 (2) (a) An individual, association, corporation, entity, or health care institution injured by a public or private
22 individual, association, agency, entity, or corporation by any conduct prohibited by [sections 1 through 6] may
23 bring a civil action. Upon the finding of a violation under [sections 1 through 6], the aggrieved party is entitled to
24 recover:

25 (i) three times the actual damages sustained, including pain and suffering;

26 (ii) the costs of bringing the action; and

27 (iii) reasonable attorney fees.

28 (b) Damages awarded under this section may be no less than \$5,000 for each violation, plus the costs
29 of bringing the action and reasonable attorney fees.

30 (c) Damages awarded under this section are cumulative and not exclusive of other remedies afforded

under any other state or federal law.

(3) In a civil action brought pursuant to this section, the court may award injunctive relief, including but not limited to ordering reinstatement of a health care provider to the health care provider's prior job position.

Section 7. Section 37-1-105, MCA, is amended to read:

"37-1-105. Reporting disciplinary actions against licensees -- exception. (1) The department has the authority and shall require that all boards and department programs require each applicant for licensure or renewal to report any legal or disciplinary action against the applicant that relates to the propriety of the applicant's practice of or fitness to practice the profession or occupation for which the applicant seeks licensure. Failure to furnish the required information, except pursuant to 37-1-138 and subsection (2) of this section, or the filing of false information is grounds for denial or revocation of a license.

(2) An action taken against a health care provider or health care institution, as defined in [section 3], for exercising the health care provider's or health care institution's right of health care freedom of conscience pursuant to [sections 1 through 6] may not be considered a legal or disciplinary action and is not reportable for purposes of this section."

Section 8. Section 37-1-136, MCA, is amended to read:

"37-1-136. Disciplinary authority of boards -- exception -- injunctions. (1) Subject to 37-1-138, each licensing board allocated to the department has the authority, in addition to any other penalty or disciplinary action provided by law, to adopt rules specifying grounds for disciplinary action and rules providing for:

- (a) revocation of a license;
- (b) suspension of its judgment of revocation on terms and conditions determined by the board;
- (c) suspension of the right to practice for a period not exceeding 1 year;
- (d) placing a licensee on probation;
- (e) reprimand or censure of a licensee; or
- (f) taking any other action in relation to disciplining a licensee as the board in its discretion considers proper.

(2) Any disciplinary action by a board ~~shall~~ must be conducted as a contested case hearing under the provisions of the Montana Administrative Procedure Act.

(3) Notwithstanding any other provision of law, a board may maintain an action to enjoin a person from

engaging in the practice of the occupation or profession regulated by the board until a license to practice is procured. A person who has been enjoined and who violates the injunction is punishable for contempt of court.

(4) An action may not be taken against a person who is in compliance with Title 50, chapter 46, or who is exercising the person's right of health care freedom of conscience pursuant to [sections 1 through 6].

(5) Rules adopted under subsection (1) must provide for the provision of public notice as required by 37-1-311."

Section 9. Section 37-1-303, MCA, is amended to read:

"37-1-303. Scope. This part governs the licensure, the practice and unauthorized practice, and the discipline of professions and occupations governed by this title unless otherwise provided by statutes relating to a specific board and the profession or occupation it regulates or by [sections 1 through 6]. The provisions of this chapter must be construed to supplement the statutes relating to a specific board and the profession it regulates. The method for initiating and judging a disciplinary proceeding, specified in 37-1-307(1)(d), must be used by a board in all disciplinary proceedings involving licensed professionals."

Section 10. Section 37-1-307, MCA, is amended to read:

"37-1-307. Board authority. (1) ~~A~~ Except as provided in subsection (2), a board may:

(a) hold hearings as provided in this part;

(b) issue subpoenas requiring the attendance of witnesses or the production of documents and administer oaths in connection with investigations and disciplinary proceedings under this part. Subpoenas must be relevant to the complaint and must be signed by a member of the board. Subpoenas may be enforced as provided in 2-4-104.

(c) authorize depositions and other discovery procedures under the Montana Rules of Civil Procedure in connection with an investigation, hearing, or proceeding held under this part;

(d) establish a screening panel to determine whether there is reasonable cause to believe that a licensee has violated a particular statute, rule, or standard justifying disciplinary proceedings. A screening panel shall specify in writing the particular statute, rule, or standard that the panel believes may have been violated. The screening panel shall also state in writing the reasonable grounds that support the panel's finding that a violation may have occurred. The assigned board members may not subsequently participate in a hearing of the case. The final decision on the case must be made by a majority of the board members who did not serve on the screening

1 panel for the case.

2 (e) grant or deny a license and, upon a finding of unprofessional conduct by an applicant or license
3 holder, impose a sanction provided by this chapter.

4 (2) A board may not take an action allowed under subsection (1) if a licensee or applicant for a license
5 was acting pursuant to [sections 1 through 6].

6 ~~(2)(3)~~ Each board is designated as a criminal justice agency within the meaning of 44-5-103 for the
7 purpose of obtaining confidential criminal justice information, as defined in 44-5-103, regarding the board's
8 licensees and license applicants and regarding possible unlicensed practice, but the board may not record or
9 retain any confidential criminal justice information without complying with the provisions of the Montana Criminal
10 Justice Information Act of 1979, Title 44, chapter 5.

11 ~~(3)(4)~~ A board may contact and request information from the department of justice, which is designated
12 as a criminal justice agency within the meaning of 44-5-103, for the purpose of obtaining criminal history record
13 information regarding the board's licensees and license applicants and regarding possible unlicensed practice.

14 ~~(4)(5)~~ (a) A board that is statutorily authorized to obtain a criminal background check as a prerequisite
15 to the issuance of a license shall require the applicant to submit fingerprints for the purpose of fingerprint checks
16 by the Montana department of justice and the federal bureau of investigation.

17 (b) The applicant shall sign a release of information to the board and is responsible to the department
18 of justice for the payment of all fees associated with the criminal background check.

19 (c) Upon completion of the criminal background check, the department of justice shall forward all criminal
20 history record information, as defined in 44-5-103, in any jurisdiction to the board as authorized in 44-5-303.

21 (d) At the conclusion of any background check required by this section, the board must receive the
22 criminal background check report but may not receive the fingerprint card of the applicant. Upon receipt of the
23 criminal background check report, the department of justice shall promptly destroy the fingerprint card of the
24 applicant.

25 ~~(5)(6)~~ Each board shall require a license applicant to provide the applicant's social security number as
26 a part of the application. Each board shall keep the social security number from this source confidential, except
27 that a board may provide the number to the department of public health and human services for use in
28 administering Title IV-D of the Social Security Act.] (Bracketed language terminates on occurrence of
29 contingency--sec. 1, Ch. 27, L. 1999.)"

1 **Section 11.** Section 37-1-308, MCA, is amended to read:

2 **"37-1-308. Unprofessional conduct -- complaint -- investigation -- immunity -- exceptions. (1)**

3 Except as provided in subsections (4), ~~and (5), and (6)~~, a person, government, or private entity may submit a
4 written complaint to the department charging a licensee or license applicant with a violation of this part and
5 specifying the grounds for the complaint.

6 (2) If the department receives a written complaint or otherwise obtains information that a licensee or
7 license applicant may have committed a violation of this part, the department may, with the concurrence of a
8 member of the screening panel established in 37-1-307, investigate to determine whether there is reasonable
9 cause to believe that the licensee or license applicant has committed the violation.

10 (3) A person or private entity, but not a government entity, filing a complaint under this section in good
11 faith is immune from suit in a civil action related to the filing or contents of the complaint.

12 (4) A person under legal custody of a county detention center or incarcerated under legal custody of the
13 department of corrections may not file a complaint under subsection (1) against a licensed or certified provider
14 of health care or rehabilitative services for services that were provided to the person while detained or confined
15 in a county detention center or incarcerated under legal custody of the department of corrections unless the
16 complaint is first reviewed by a correctional health care review team provided for in 37-1-331.

17 (5) A complaint may not be filed under this part against a health care provider or health care institution,
18 as defined in [section 3], for exercising the health care provider's or health care institution's right of health care
19 freedom of conscience pursuant to [sections 1 through 6].

20 ~~(5)(6)~~ A board member may file a complaint with the board on which the member serves or otherwise
21 act in concert with a complainant in developing, authoring, or initiating a complaint to be filed with the board if the
22 board member determines that there are reasonable grounds to believe that a particular statute, rule, or standard
23 has been violated."

24
25 **Section 12.** Section 37-1-402, MCA, is amended to read:

26 **"37-1-402. Unprofessional conduct -- complaint -- investigation -- exception -- immunity. (1) A**

27 Except as provided in subsection (3), a person, government, or private entity may submit a written complaint to
28 the department charging a licensee or license applicant with a violation of this part and specifying the grounds
29 for the complaint.

30 (2) If the department receives a written complaint or otherwise obtains information that a licensee or

license applicant may have violated a requirement of this part, the department may investigate to determine whether there is reasonable cause to believe that the licensee or license applicant has committed the violation.

(3) A complaint may not be filed under this part against a licensee or a license applicant for exercising the licensee's or applicant's health care freedom of conscience pursuant to [sections 1 through 6].

~~(3)~~(4) A person or private entity, but not a government entity, filing a complaint under this section in good faith is immune from suit in a civil action related to the filing or contents of the complaint."

Section 13. Section 50-5-111, MCA, is amended to read:

"50-5-111. Prohibited activities. (1) It is unlawful to:

~~(1)~~(a) operate a facility without a license;

~~(2)~~(b) prevent, interfere with, or impede department investigation, department enforcement, department examination of relevant books and records, or activities of the department concerning the preservation of evidence; or

~~(3)~~(c) violate any provision of part 1 or 2 of this chapter or violate a rule, license provision, or order adopted or issued pursuant to part 1 or 2.

(2) A health care facility that is exercising its health care freedom of conscience pursuant to [sections 1 through 6] is not in violation of this section."

NEW SECTION. **Section 14. Codification instruction.** [Sections 1 through 6] are intended to be codified as an integral part of Title 50, chapter 4, and the provisions of Title 50, chapter 4, apply to [sections 1 through 6].

NEW SECTION. **Section 15. Severability.** If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

NEW SECTION. **Section 16. Effective date.** [This act] is effective on passage and approval.

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